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December 14, 2016

██████████
Honorable Edgardo Ramos
United States District Judge
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square, Courtroom 619
New York, New York 10007

Re: United States v. El Gammal, 15 Cr. 588 (ER)

Hon. Judge Ramos:

The government has now written the Court twice, without ever responding to the three basic facts that conclusively support the relief requested by Mr. Gammal.

One: The Protective Order, prepared and drafted by the government, expressly and unambiguously requires the government to designate as “Protected Materials” only those “materials that, if disseminated to third parties, could, among other things, implicate the safety of others and impede ongoing investigations.” PO at 1. Only that narrow category of documents is to be subject to restriction under the PO. *Id.*

Two: Rather than meet its burden and duty, under the PO it wrote, to only designate “Protected Materials” as “Protected Materials,” the government labeled nearly its entire discovery as “Protected Materials,” including documents that are plainly not “Protected Materials” as specifically defined in the PO. These wrongly labeled materials include public posts on social media, materials deliberately disseminated to the press and public by the government, and materials used by the government to prepare its own case and witnesses.

Three: the government’s decision to ignore the language of the PO, and resulting over-designation of materials, has prejudiced the preparation of Mr. Gammal’s case.

The government’s 12/14/16 Letter (“2d Opp.”), provides no appropriate basis to deny the requested relief. In this regard, the government’s attempt to distinguish the three cases, *Jones*, *Ricaurte-Gomez* and *Rahimi*, in which the government was required to review its confidentiality designations to ensure that they were appropriate, fails. It is of

Further, the PO covers more than trial witnesses. Indeed, this is part of the problem Mr. El Gammal faces. He may not discuss the improperly designated “Protective Material” with any fact witness. [REDACTED]

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[REDACTED]
[REDACTED]
[REDACTED] Accordingly, no justification exists for the government's continuing refusal to de-designate those materials, so the defense may freely use these same materials and information in the preparation of its case.

For all these reasons, and those in its prior submissions on the issue, the Court should modify the PO in this case to include the language in the *Jones* protective order and allow Mr. Gammal to prepare for trial. In the alternative, the Court should order the government to de-designate any materials that (i) are publicly available; (ii) will be a publicly filed government trial exhibit; (iii) have been shown to third-party fact witnesses by the government; or (iv) do not otherwise fall within the narrow definition of "Protected Materials."

Respectfully submitted,

/s/

Daniel Habib
Annalisa Miron
Sabrina Shroff
Assistant Federal Defenders

cc: Mr. Ahmed M. El Gammal (by mail)

¹ The bolded portion of this paragraph will be redacted from the filing provided to the government and filed on ECF, as it reveals defense investigation and work product.